



DATE: July 13, 2000

STATE MINING & GEOLOGY BOARD

MINING RECLAMATION STANDARDS COMMITTEE

Item 1 -- Consideration of a Request by the San Diego Association of Governments for Exemption from the Requirements of SMARA Under PRC § 2714(f) for Six Offshore Borrow Sites

BACKGROUND: The San Diego Association of Governments (SANDAG) is requesting an exemption from the requirements of the Surface Mining and Reclamation Act of 1975 (SMARA) to remove a total of approximately two million cubic yards of sand from six offshore borrow sites located between the cities of Oceanside and San Diego. SANDAG is the lead agency for the Regional Beach Sand Project. The Department of Conservation has informed SANDAG that the activities described in this project constitute mining subject to SMARA.

Sand removed from the six borrow sites is to be placed on 12 of the region's most severely eroded beaches. An Executive Summary and the Introduction Chapter from the joint Environmental Impact Report / Environmental Assessment prepared by SANDAG and the United States Department of the Navy are attached for details of the project's activities. The Summary and Introduction describe the basis, scope, and timing of the proposed offshore mining and beach replenishment operations.

STATUTORY / REGULATORY CONSIDERATIONS: The following statutes and regulations apply; others may also apply.

PRC § 2714 -- *This chapter does not apply to any of the following activities:*

PRC § 2714(f) -- *Any other surface mining operations that the board determines to be of an infrequent nature and which involve only minor surface disturbances.*

PRC § 2735 – *“Surface mining operations” means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. surface mining operations shall include, but are not limited to: (a) Inplace distillation or retorting or leaching; (b) The production and disposal of mining waste; (3) Prospecting and exploratory activities.*

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PRC § 2770 (a) -- Except as provided in this section, no person shall conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation pursuant to this article.

CCR § 3501 (Definitions) -- Surface Mining Operations. In addition to the provisions of Section 2735 of the Act, borrow pitting, streambed skimming, segregation and stockpiling of mined materials (and recovery of same) are deemed to be surface mining operations unless specifically excluded under Section 2714 of the Act or Section 3505 of these regulations.

OTHER CONSIDERATIONS: The Board has ruled on the following requests for exemptions made pursuant to PRC § 2714(f):

Syar Industries, December 1992 (Exempt): Board finds Syar Industries removal of 85,000 cubic yards of stockpiled material exempt under PRC § 2714(f), and that said materials may be removed for processing. The material had been mined and stockpiled under vested operations prior to 1990. These operations were ceased in late 1990 at Board insistence since no reclamation plan was in effect at the mine site. The reclamation plan is under appeal to the Board.

Delta Chemical, Cadiz Lake, December 1992 (Not Exempt): Board finds Delta Chemical, Inc.'s operation of a brine water extraction and processing facility at Cadiz Lake not exempt from SMARA. Delta was pumping brine water from the ground and allowing it to evaporate from settling ponds. Concentrated brine solution (calcium chloride) was then shipped out for further processing. This process is not the same as described under PRC § 2714(g), which allows solar evaporation of sea water. Delta's operation had effects on groundwater and surface lands (PRC § 2729).

Hickman Appeal, May 1993 (Not Exempt): Mr. Hickman mined approximately 10,000 cubic yards of material from a 1½ acre site along the Sacramento River over a two year period (1988-1990) for commercial sale. No lead agency approved permit, reclamation plan or financial assurances were in place. The Board denied the exemption request.

Hanson Appeal, July 1993 (Exempt): In order to improve his orchard Mr. Hanson appealed for exemption from SMARA to remove approximately 40,000 cubic yards of materials from beneath 11 acres of planted trees, based on the fact that this was a one-time activity necessary to improve his farmland. Hanson received some compensation from a contracting company for the removed materials. The process involved the removal of his orchard trees, the excavation of material, and the replanting of a new orchard on

prepared earth. The Board granted the exemption as a one-time activity in which the surface was immediately restored to productive use.

San Bernardino Associated Governments (SANBAG) Appeal, November 1995 (Exempt): In order to widen State Route 71 that runs along the western edge of the Prado Flood Control Basin, approximately 500,000 cubic yards of fill material would have to be placed within the margins of the Basin, thus reducing the water impoundment capacity of the Basin. The proposed solution, which had the consent of the Army Corps of Engineers who operate the Flood Control Basin, was to remove the 500,000 cubic yards of fill material from within the Basin and use it for State Route 71 construction. This solution would provide a material balance within the Basin. An Initial Study, Environmental Assessment and a Negative Declaration were prepared for the 35 acre borrow pit, as well as a reclamation plan for the pit. The Board granted the exemption as a one-time activity of limited duration owing to the unique circumstances of having to maintain a material balance within the Flood Control Basin.

McLaughlin Engineering & Mining, Inc. Appeal, January 1996 (Exempt): McLaughlin Engineering proposed to remove approximately 21,000 cubic yards of waste rock stockpiled at an abandoned, unreclaimed mine site in southern Inyo County, and use the material to cap a nearby hazardous waste site at Searles Lake. McLaughlin agreed to "reclaim" the site by contour grading, ripping access roads, and providing protective berms upon completion of removal of the stockpiled materials. The project duration was for three months. The SMGB granted the one-time exemption, stating the operation was subject to all necessary lead agency permits.

Chandler Ranches -- Huerhuero Creek Streambed Cleanout, July 1996 (Exempt): Chandler Ranches requested exemption from SMARA for a one-time removal of approximately 30,000 cubic yards of material stockpiled near the bank of the Huerhuero Creek. The stockpiles resulted from a clean-out of the creek which had become choked with sand. The stockpiles were in a Flood Hazard Zone, and San Luis Obispo County agreed that the stockpiles presented a public threat if flooding should occur.

The Kiwanis of the Redwoods, Eel River, Mendocino County, September 1996, (Not Applicable): Each year The Kiwanis of the Redwoods sponsors a Harley Davidson Motorcycle run along the South Fork of the Eel River. The event, known as the "Redwood Run", is to raise funds for scholarships and provide support for local school activities. The event had occurred annually for the past 19 years. The Kiwanis proposed to grade an in-stream gravel bar to maintain a roadway section that traverses the bar, as well as complete some armoring of the river's bank that had become eroded. The Board determined that these activities did not constitute surface mining operations in that they were an integral part of a larger, County permitted construction project and were not, therefore, subject to the requirements of SMARA.

Lane Ranch, 70th Street Quarry (Palmdale), Los Angeles County, September 1996, (Denied): The operator, who already possessed a Mine ID Number and had a reclamation plan for the 4 acre site, requested exemption from SMARA since business had been very poor for several years, and the mine site was only sporadically active. The Board concluded that it does not have the authority to unilaterally negate a lead agency approved reclamation plan, nor did it believe that a mine operator should be free from the obligation to reclaim the operation.

Humphreys and Anchordoguy, Titan Missile Site, Butte County, March 1997 (Exempt): The operator proposed to remove a large stockpile (est. 80,000 cubic yards) of unsorted construction and mineral debris that remained on site following the building of a Titan Missile Site on private land in the 1960's. The operator would level the land with the stockpiled materials according to the landowner's approval, and then export for sale any remaining mineral material. The land reclamation portion was to be completed by November 30, 1997, after which the operator could export for sale any remaining materials until January 31, 1998.

Clifford R. Brown Engineering & Surveying, Graeagle Bridge Project, Plumas County, March, 1997 (Denied) The operator petitioned the State Mining and Geology Board (SMGB) for exemption from the requirements of the Surface Mining and Reclamation Act in order to perform instream mining work on the Graeagle Bridge Project located within the Middle Fork of the Feather River in Plumas County. The request was to remove about 2,000 cu. yards of gravel point bar that had accumulated in the river channel and was deflecting channel flows causing erosion of a river bank and forming a threat to a bridge support on State Highway 89. The SMGB denied the exemption request based on the fact that the adjacent land owner was silent on the issue, CalTrans had not taken action to protect its own bridge (although the local engineer is purported to have supported the removal of the bar), and the Dept. of Fish & Game said they would not issue a permit to enter the river unless some environmental and mitigation monitoring issues were addressed.

Clifford R. Brown Engineering & Surveying, Plumas Pines Country Club, Plumas County, March, 1997 (Exempt): The operator petitioned the SMGB for exemption from SMARA based on the need for emergency action to remove sediment and debris from the Middle Fork of the Feather River that ran through a residential community. During the Winter 1997 flooding of the river, several houses were subjected to about one foot of flood water, and erosion of their backyards adjacent to the river channel. The operator had received an emergency permit from the Department of Fish & Game, and had completed most of the sediment removal (which was sold commercially), debris removal, channel regrading, and armored the river bank with rip-rap. The SMGB granted an exemption to complete the minor amount of work remaining, provided that all local permits were obtained and that the work was completed prior to the winter of 1997-1998. The SMGB specified that this exemption did not condone the past activities by the operator, nor did the SMGB consider this an emergency situation (the emergency had passed).

Plumas Corporation, Spanish Creek, Plumas County, November 1997 (Exempt):

The operator requested exemption from SMARA to perform a bedload sampling demonstration project on Spanish Creek. The proponent would place a Vortex Bedload Sampler in the Creek, and measure the amount of bedload being transported during certain water flows. The material to be measured would be collected in a settling pond dug beside the Creek. When the pond filled, approximately 2,000 cubic yards of material would be excavated and acquired by the County for use on its roads; this would be a cyclic event that would last about 3 years. The SMGB granted an exemption based on the fact that this was a scientific project, the results of which would be used for the benefit of the river environment. The "commercial" applicability of the relatively small quantities of material removed was clearly secondary to the aim of the project. The proponent had acquired all necessary permits from the U. S. Army Corps of Engineers, Fish and Game, and the County. The activity was supported by the County.

San Diego County -- Lakeside Community -- March 1998 (Denied): The County proposed to promote commercial development of a six acre parcel, and in order to do so it desired to grade and remove an estimated 500,000 to 800,000 cubic yards of material. The removal of this material would allow for the development of approximately 25 residential units and the widening of an adjacent road. The County intended to contract with private sand and gravel operators for the removal of the surface material, from which the County would receive royalty payments. The operator would leave the land in a graded condition suitable for the construction of single residences. The County believed the project would take between two and five years to complete. It estimated the value of the parcel would increase from its current \$75,000 to between \$350,000 and \$400,000. Following the removal of this material, the County would be able to widen the adjacent road at a substantial (unspecified) cost savings to the County. The Board determined that this was in fact a commercial surface mining project, where the reclaimed end use would be land suitable for a housing development.

Faria Family Partnership, Ventura County, May 1998 (Exempt): The Faria Family Partnership (Partnership) owned approximately 80 acres of lemon orchard in Ventura County. Since the mid-1980's, the Partnership had removed older, unproductive trees and re-planted new trees. During these re-planting activities, approximately 3,000 cubic yards of rocks had been removed from the re-planted areas and stockpiled on the property. The Partnership was planning to renovate about 12 acres of old grove, and re-plant the 12 acres with new trees. It anticipated that to do so typically would require the removal of additional rocks from the soil. However, the Partnership no longer had any storage space for the anticipated new batch of rocks it expected to collect from the re-planting area. The Partnership proposed to eliminate the current 3,000 cubic yards stockpile so as to make room for the rocks its anticipated would be unearthed during the replanting activity. It was informed by the County of Ventura that the sale of this stockpiled material constituted mining under the Surface Mining and Reclamation Act. The SMGB granted the exemption on the basis that the activity clearly was agricultural, and that the removal of the rocks which

had been stockpiled over many years was a minor, secondary effect of the agricultural operations. The SMGB allowed for the removal of 6,000 cubic yards.

Michael R. Evans, Kings County, November 1998 (Exempt): The project consisted of removing approximately 30 inches of top material over a 7 1/2 acre agricultural parcel in order to lower the elevation of the parcel. The parcel was adjacent to an irrigation canal, and lowering the elevation of the land allowed for enhanced irrigation from the canal. Kings County, lead agency, supported the exemption request. The SMGB granted the request on the basis that the project was short lived and resulted in improved agricultural land.

2-Way Mining, Kern County, November 1999 (Exempt): The project proposal on BLM administered lands was to remove approximately 6,800 cubic yards of pre-SMARA gypsum stockpiles located at (or near) the Maricopa Gypsum Mine Site, and sell the material commercially. This mine apparently was closed prior to the enactment of SMARA. No new excavation would be done at the site, and the site would be re-contoured following removal of most of the stockpiled material in such a manner as to conform to the surrounding topography. Access roads to the site currently were used to maintain oil leases, so no new roads would be required. A CEQA Environmental Information Form and Environmental Assessment were prepared for submittal to the BLM and the County for grading permits. The County did not oppose the operation. The SMGB believed the removal of the pre-SMARA gypsum stockpiles and the recontouring of the lands was a short lived project that resulted in the partial reclamation of otherwise unreclaimed mined lands.

DISCUSSION:

The SMGB has established Exemption Criteria that should be addressed:

1. CEQA Compliance: SMARA § 2712(a) -- Has an environmental review been completed on the activity either separately or as part of a larger project?

Yes. A joint Environmental Impact Report / Environmental Assessment has been prepared by SANDAG and the Department of the Navy.

2. Local Authority: SMARA § 2715 & § 2770(a) -- Is the activity to be conducted permitted or otherwise authorized by a local lead agency?

SANDAG is the authorizing lead agency for the Regional Beach Sand Project.

3. End Use Outlined: SMARA § 2711(b), § 2712 & § 2772(g)(h) -- Is the end use or proposed end use of property on which the activity occurs defined?

Yes. The submarine borrow pits will be naturally replenished with sand and re-contoured by marine actions to their original sea bed configurations.

4. Level Playing Field: SMARA § 2714(b) -- Have the commercial purposes of the activity been considered?

None presented by Petitioner; however, it is believed that supplying two million cubic yards of beach quality marine sand from other, distant inland sources along the length of coastline involved would not be economical for the project because of the mechanics of transportation. Also, the probability of increased congestion of land traffic along the affected beaches, as well as undesirable air quality problems from surface supply trucks, may preclude inland mine sources from participating.

No opposition from local commercial surface mine operators has been received by the SMGB office.

EXECUTIVE OFFICER'S RECOMMENDATION: The Executive Officer finds that the proposed SANDAG surface mining operations meet the statutory criteria for exemption under PRC § 2714(f) of being of an infrequent nature and involving only minor surface disturbances, as well as the SMGB's Exemption Criteria. The Executive Officer recommends that the Mining Reclamation Standards Committee recommend to the SMGB that the proposed SANDAG operation be granted an exemption from the requirements of SMARA.